

JOHN EDWARD TYLER,)	
)	
Petitioner,)	
)	
vs.)	Case No. 4:06CV35 CDP
)	
TROY STEELE,)	
)	
Respondent.)	

This matter is before me on the petition of John Edward Tyler for a writ of habeas corpus under 28 U.S.C. § 2254. I referred this matter to United States Magistrate Mary Ann Medler for a report and recommendation on all dispositive and non-dispositive matters pursuant to 28 U.S.C. § 636(b)(1). On September 1, 2006, Judge Medler filed her recommendation that the petition of Mr. Tyler for a writ of habeas corpus be denied. After I granted him an extension of time, petitioner filed his objections to Judge Medler's report and recommendation on October 11, 2006.

I have conducted de novo review of all issues in this case, and have reviewed the record, evidence, and all arguments raised by the parties. After careful consideration, I will adopt and sustain the thorough reasoning of Judge Medler set forth in support of her Report and Recommendation of September 1,

2006.

Petitioner's objections do not raise any new issues not considered in full by the Magistrate Judge, and my review of the evidence shows that the Magistrate Judge's conclusions were correct. Petitioner argues that the Magistrate Judge did not consider the ineffectiveness of curative instructions to a jury. However, the Magistrate Judge found such instructions consistent with clearly established federal law when she quoted Eighth Circuit case law that approves of the use of a curative instruction to alleviate potential prejudice flowing from improper testimony. See United States v. Flores, 73 F.3d 826, 831-32 (8th Cir. 1996).

Additionally, petitioner argues that the Magistrate Judge failed to consider Marguerite Gray's statement at the post-conviction hearing that she would have testified at trial that the victim told her that petitioner did not rape her. Like the other testimony that would have been provided by Ms. Gray, this testimony concerns the credibility and reputation for truthfulness of the victim. The Magistrate Judge agreed with the state court that such testimony was cumulative and therefore found the argument without merit. I agree with this conclusion and will therefore adopt the Report and Recommendation.


Accordingly,

IT IS HEREBY ORDERED that the Report and Recommendation of the

Magistrate Judge [# 16] is adopted in its entirety, and the petition of John Edward Tyler for a writ of habeas corpus [#2] is DENIED.

IT IS FURTHER ORDERED that no certificate of appealability will be issued, as none of the grounds raised present issues on which reasonable jurists could differ.

A separate judgment will be entered this same date.



CATHERINE D. PERRY
UNITED STATES DISTRICT JUDGE

Dated this 2nd day of November, 2006.